

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CORY PARSON, Individually and
as Personal Representative of the Estate
of Robert Lee Parson,

Plaintiff,

v.

BRETT S. BLEMLE, PA-C, ROBERT
FRANKEL, M.D., BAYHEALTH
MEDICAL CENTER, INC., and
BAYHEALTH EMERGENCY
PHYSICIANS, LLC.,

Defendants.

C.A. No. K19C-07-035 NEP
In and For Kent County

TRIAL BY JURY OF
TWELVE DEMANDED

Submitted: October 15, 2019

Decided: October 22, 2019

ORDER

***Upon Review of the Affidavit of Merit
ACCEPTED***

This matter involves a healthcare negligence suit filed by Plaintiff Cory Parson (hereinafter "Plaintiff"), individually and as personal representative of the estate of Robert Lee Parson, against Defendants Brett S. Blemle, PA-C, Robert Frankel, M.D., Bayhealth Medical Center, Inc., and Bayhealth Emergency Physicians, LLC (all Defendants hereinafter collectively "Defendants"). Defendants Bayhealth Medical Center, Inc., and Bayhealth Emergency Physicians, LLC (hereinafter "Moving Defendants"), have asked the Court to review the affidavits of merit filed in this case to

determine whether they satisfy 18 *Del. C.* § 6853. The Court has done so and has determined that the affidavit of merit applicable to Moving Defendants complies with the statute.

In this case, Plaintiffs filed their Complaint on July 31, 2019, alleging that Defendants were medically negligent and breached the applicable standard of care. Specifically, with regard to the allegations against Moving Defendants, Plaintiffs allege, *inter alia*, that Moving Defendants are liable for the conduct of Brett S. Blemle, PA-C, and Robert Frankel, M.D., under the doctrine of *respondeat superior* and for the alleged wrongful death of Robert Parson. Plaintiff also alleges, *inter alia*, that Moving Defendant Bayhealth Medical Center, Inc., was negligent in that it failed to properly supervise or train its staff, or both; failed to provide enough staff to provide adequate care to its patients; and failed to have proper standards, policies, rules, or procedures in place to ensure adequate care was provided to its patients.

In Delaware, a healthcare negligence lawsuit must be filed with an affidavit of merit as to each defendant, signed by an expert, and accompanied by the expert's *curriculum vitae*.¹ The expert must be licensed to practice medicine as of the affidavit's date and engaged in this practice in the same or similar field as the defendant in the three years immediately preceding the alleged negligence, and Board certified in the

¹ 18 *Del. C.* § 6853(a)(1).

same or similar field as the defendant if the defendant is Board certified.² The affidavit must also state that reasonable grounds exist to believe that the defendant was negligent in a way that proximately caused the plaintiff's injury.³ The affidavit must be filed under seal and, upon request, may be reviewed *in camera* to ensure compliance with statutory requirements.⁴ The affidavit's requirements are "purposefully minimal."⁵ Affidavits that merely track the statutory language are deemed sufficient.⁶

In this matter, one affidavit of merit is under consideration. As requested by Moving Defendants, upon the Court's *in camera* review, the Court finds the following as to the applicable affidavit:

- a. The expert signed the affidavit.
- b. The *curriculum vitae* of the expert is attached.
- c. The expert, who is a physician, was licensed to practice medicine as of the date of the affidavit.
- d. The expert is Board certified in Emergency Medicine, practices medicine in that specialty, and supervises physician's assistants in that field.

² *Id.* § 6853(c).

³ *Id.*

⁴ *Id.* § 6853(d).

⁵ *Mammarella v. Evantash*, 93 A.3d 629, 637 (Del. 2014) (quoting *Dishmon v. Fucci*, 32 A.3d 338, 342 (Del. 2011)).

⁶ *Dishmon*, 32 A.3d at 342–43.

- e. The expert was involved in treating patients in the field of Emergency Medicine for the three years prior to the alleged negligent acts.
- f. The affidavit states that reasonable grounds exist to believe that the Moving Defendants, along with the other Defendants, breached the applicable standard of care, and that the breaches were a proximate cause of the injuries to Robert Lee Parson.

WHEREFORE, in consideration of the above, the court finds that the affidavit of merit applicable to Moving Defendant complies with 18 *Del. C.* § 6853(a)(1) and (c).

IT IS SO ORDERED.

/s/ Noel Eason Primos
Judge

NEP/wjs
via. File & ServeXpress
oc: Prothonotary
Counsel of Record